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ABSTRACT

The basic objective of this proposed grievance procedure is to resolve grievances as efficiently and informally as possible. The model recommends three steps. The first provides an established, yet informal, procedure to resolve minor grievances. The employee with the complaint is interviewed by his immediate supervisor and then, if necessary, by the principal if the principal is not the employee's immediate supervisor. The second step includes two options and is designed for those grievances that have not been satifactorily resolved in the first step. In the first option the employee appeals the principal's decision to a review panel. The superintendent receives a copy of the appeal and may, if he wishes, reverse or modify the principal's decision before the review panel hearing. If the superintendent chooses not to act or acts in a way that does not satisfy the employee, the review panel holds a hearing and makes a recommendation to the superintendent. The panel's recommendation is not binding on the superintendent, and his decision, if it is not appealed to the board, is final. In the second option the review panel's decision is binding on the superintendent. The third stage of the procedure provides for a final review of the grievance by the school board. (Authors/JF)

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A Grievance Procedure for Public School Employees

ROBERT E. PHAY and JOHN C. LILLIE

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Foreword

In recent years requests from teachers, school board members, and school administrators about how to deal with disagreements and problems that arise between school employees and the school administration have increased. In reply to these requests I have often suggested that the school board adopt a grievance procedure, so that these conflicts can be resolved before the parties take firm positions. School people in turn have asked for guidance in developing such a procedure. With the able assistance of John C. Lillie, a third-year law student at The University of North Carolina at Chapel Hill, I have developed a model code that is now offered for your use.

Since both authors have been trained in the law and not school administration, we thought it essential that the code be read and criticized by teachers, principals, superintendents, and board members before we published it. Accordingly, we asked numerous school people, including several association and state agency representatives, to read and comment on the proposed procedure. We are indebted to all of those who have given their time to improving the code as it went through several drafts, although we take full responsibility for its provisions. The advice that we have received has been essential to its development.

Inevitably experience with this code will demonstrate need for modification. We welcome any suggestions for change and would appreciate receiving a copy of any adopted code.

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Associate Professor of
Public Law and Government

Chapel Hill
April 1973

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Introduction

Until recently, an employee grievance procedure* was unnecessary except in large, urban schools. Today, however, more and more schools are finding grievance procedures necessary to resolve grievances efficiently and fairly. One reason such procedures are now necessary is that the relationship between the teacher and the school administration has taken on more formal, legal characteristics. The broad discretionary authority that was formerly conceded to the school administrator has been reduced, and he has had to rely more heavily upon his specific statutory authority. In addition, the personal relationship that existed in smaller school units—and still exists in some—has become more difficult to maintain as school units have grown in size and complexity. As a result of this new impersonality, the number of situations that give rise to grievances has increased and the possibility of resolving them informally has declined.

A second reason for a written grievance procedure is that it reduces the possibility of arbitrary and unfair action by the school administration. Most conflicts can be resolved informally, but on those occasions when the employee's supervisor (usually the principal) has acted unfairly, the grievance procedure provides a mechanism for the superintendent or school board to review and correct the supervisor's action.

A third reason for a school board to adopt a grievance procedure is that it provides an opportunity for the employee to

*This grievance procedure is written so that it is available to all school employees. If the board chooses, however, it may limit the procedure to the professional staff. The grievance procedure is written in terms of all employees because the authors consider the interests of academic and nonacademic employees to be similar enough to obviate the need for separate procedures. In this procedure, the same individual—the supervisor, the principal, and the superintendent—will be involved and will function in a similar manner regardless of the type of employee presenting the grievance.

express his ideas and complain to someone at a level above his immediate supervisor and to be seriously listened to at this higher level. If his side of the issue is fully considered, he will be more likely to think he has been dealt with fairly.

A fourth, related reason for a grievance procedure is that it gives the superintendent or the hearing board an opportunity to explain the reason and logic behind the decision or action that has precipitated the employee's complaint.

The school grievance procedure should not be the primary way in which employee grievances are resolved. It represents a more formal, and thus more expensive, way to resolve conflicts and should be used only as a last resort. The school should always encourage informal procedures and intermediary intercessions to resolve the conflict. Only when such other methods fail should the grievance procedure be used.

The basic objective of this proposed procedure is to resolve grievances as efficiently and informally as possible. The model recommends three steps. The first, which provides an established yet informal procedure to resolve minor grievances, is an interview by the employee, or employees with the same complaint, with the immediate supervisor and then, if necessary, with the principal if he is not the immediate supervisor.

The second step consists of two options and is designed for those grievances that have not been resolved in the first step to the satisfaction of the complainant. In the first option, which we prefer, the employee appeals the principal's decision to the review panel. The superintendent receives a copy of the appeal and may reverse or modify the principal's decision before the review hearing if he wishes. If the superintendent chooses not to act or does not satisfy the employee with his action, the review panel holds a hearing and makes a recommendation to the superintendent. The panel's recommendation is not binding on the superintendent, and his decision, if it is not appealed to the school board, is final.

In the second option, the initial appeal is to the superintendent, who holds an interview similar to that of the principal and then renders a decision. If the employee is not satisfied with the superintendent's decision, he may appeal that decision to a review panel. The panel holds a hearing and renders a decision that, if not appealed to the school board, is final and binding on the superintendent.

The third stage of the grievance procedure provides a final review of the grievance by the school board. The review is on the written record, and unless the action taken at the lower levels was arbitrary or capricious or was not supported by the evidence, that action is sustained. This limited type of review by the board of education will keep its involvement in the grievance procedure to a minimum.

The three steps include twenty-three sections, which are presented in this booklet. Most sections are followed by a comment that explains or clarifies their intent. Optional sections are also provided when a reasonably attractive alternative or addition exists, or when the particular rule involved should vary according to the size of the school system. Material in brackets is an alternative to the part of the section in which it appears.

Type of Grievance

A grievance is defined as "a misinterpretation, inequitable application, or violation of school policy pertaining to conditions of work or disciplinary actions affecting the employee." The definition is broad so that the procedure will be available for almost all complaints relating to the employee's working conditions. The grievance procedure is not to be used, however, when the subject of the complaint is in issue in another procedure, such as the dismissal of a teacher or the nonrenewal of a teacher's contract. It is also not to be used to settle labor disputes such as the negotiation of contracts. However, since nonacademic employees do not have the rights guaranteed to teachers by the General Statutes, the grievance procedure does apply to these employees when the dismissal is based on a disciplinary action or a failure of performance during the contract period.

What School Boards Should Do

School boards that wish to adopt a grievance procedure should establish a committee to draft a proposed procedure. This committee should include teachers, administrators, nonprofessional employees, and perhaps parents and a school board member. The committee can use this booklet as a guide, but it should decide for itself the policies that are best for its school system. (Extra copies of this publication may be purchased from the Institute of Government for $2.50 each.) The committee's final draft should go to the school board for the board's consideration.

rewriting, and final adoption as official school board policy. When the procedures have been adopted, the board should provide a copy to each school employee.

When these things have been done, local boards of education should have a clear procedure for resolving those difficult employee grievances that informal procedures cannot resolve. It will be an established method by which teachers and other employees can express a complaint or problem, knowing that it will be acted upon quickly and fairly. Such a procedure is important to good school administration, and responsible school management should no longer rely on vague, informal ways of resolving problems in dealing with the demands of a modern school system.

Step I

REVIEW BY IMMEDIATE SUPERVISOR AND PRINCIPAL

Section 1. Basis for a Grievance

When an employee, or group of employees with the same grievance, of the _____ school administrative unit thinks a misinterpretation, inequitable application, or violation of school policy has occurred pertaining to conditions of work or disciplinary actions affecting him, he may submit a grievance to his immediate supervisor. The grievance must be filed within ten work days* after the employee knew or should have known of the conduct or acts upon which the grievance is based. The grievance shall state specifically the action or failure of action complained of.

The grievance procedure shall not be available for the consideration of any matter that is the subject of a dismissal or suspension of a teacher initiated under G.S. 115–142. If the grievance is filed and then a dismissal or suspension is begun on the

*The term "work day" is used throughout this procedure; it means days in which teachers work, not merely days in which classes are held. In computing any period of time, the day in which notice is received is not counted, but the last day of the period so computed is to be counted. Saturdays, Sundays, and scheduled school holidays, unless they are designated "snow days," shall not be included in the computation.

same or a related issue, no further action shall be taken with the grievance procedure.

The grievance procedure shall not be available to consider any matter that concerns the negotiation for or the renewal of an employee's contract. However, it shall be available to consider any matter relating to the discharge of a school employee not covered by the teacher-tenure procedure of G.S. 115–142 when the discharge is for disciplinary reasons, neglect of duty, or failure of performance during the contract period.

Comment: This grievance procedure, as the introduction notes, is written so that all school employees may use it. If the board chooses, however, it may limit the procedure to the professional staff. The grievance procedure is written in terms of all employees because we consider the interests of academic and nonacademic employees to be similar enough to eliminate the need for separate procedures. In this procedure, the same individuals—the supervisor, the principal, and the superintendent—will be involved and will function in a similar manner regardless of the type of employee presenting the grievance.

The grievance procedure can be restricted to individual employees or it can be made available to groups of employees. If a group is permitted to use it, the procedure should require that its members have the same complaint. In all cases the complaint should be specific. It should be made clear that if the procedure is limited to individual complaints, the resolution of an individual grievance will apply to other employees who are similarly situated and share that grievance.

A grievance is defined broadly in order to make this procedure available for almost all complaints relating to the employee's working conditions. The grievance procedure is not to be used, however, when the subject of the complaint is in issue in another procedure, such as the dismissal of a teacher or the nonrenewal of a teacher's contract. It is also not to be used to settle labor disputes such as the negotiation of contracts. However, since nonacademic employees and some teachers do not have the rights guaranteed to teachers by the General Statutes, the grievance procedure does apply to these employees when the dismissal is based on a disciplinary action or the failure of performance during the contract period.

Section 2. Initiation of the Procedure

a. **Supervisor Other Than Principal.** When the employee's immediate supervisor is not a principal, the employee shall present his grievance, either orally or in writing, to his supervisor. Within three work days after receiving the grievance, the supervisor shall meet with the employee to determine whether the grievance is valid and whether remedial action is justified.

Within two work days after meeting with the employee, the supervisor shall give the employee a [written] decision that shall specify the reasons for it.

Within two work days after receiving his supervisor's decision under section 2(a), an employee who is not satisfied with that decision may present his grievance to the principal. If his supervisor is not under the principal's jurisdiction, the employee may go to Step II in the procedure.

b. **Appeal to Principal or Principal Is Supervisor.** When the employee's immediate supervisor is a principal or when he is appealing a decision of a supervisor under section 2(a), the employee shall present his grievance, either orally or in writing, to the principal. The grievance shall be written if the employee is a teacher. The employee shall specify the reasons for the grievance and the remedy requested.

> **Comment:** When the employee's immediate supervisor is not a principal, the grievance is first to be made to this supervisor. When the supervisor is the principal, the employee shall present his grievance to the principal. Also, when the employee has met with the non-principal supervisor and is not satisfied with his decision, he may present his grievance to the principal. When the employee's supervisor is not under the principal's supervision, the employee may appeal the supervisor's decision to the superintendent, pursuant to Step II.

Section 3. Employee's Interview with Principal

Within five work days after he receives the grievance, the principal shall hold an informal interview with the employee to discuss the grievance and determine whether remedial action is justified. The employee may be accompanied by a person of his choice [but that person must be an employee of the school administrative unit].

When the grievance is based on an action of a school employee other than the principal, the principal may invite that person to the interview.

The principal shall arrange a convenient time and place for the interview and give timely notice to all parties to the interview.

Comment: The basic objective of this grievance procedure is to resolve grievances as efficiently and informally as possible. Thus the purpose of the principal's interview is to provide an informal and nonadversary process for resolving the grievance.

This section provides that the employee may be accompanied by any person of his choice; an option in this section restricts the choice to school employees. The primary reason for permitting another person to be present is to allay fear and provide reassurance for a shy employee. One need not be an attorney to perform this function.

The grievance may relate to a decision of the principal—for example, class assignments. At times, however, the grievance will be based on a decision or conduct of a person other than the principal. It is then usually preferable for all parties to be present at the interview. The principal is authorized to invite the person whose action precipitated the grievance to be present at the interview and usually should do so.

Section 4. Interview Procedure

At the interview, the employee shall discuss with the principal the facts from which the grievance arose, its nature, and the remedy sought. The employee, the principal, and any other person at the interview shall have the opportunity to explain any matter relating to the grievance and to question anyone at the interview.

The principal also may interview separately anyone who may have knowledge about the grievance. [However, before the principal makes a decision on the grievance, the employee shall be informed of the nature of any separate testimony and have an opportunity to rebut it.]

Comment: At the employee's interview, the principal should lead the discussion and try to prevent the interview from becoming an adversary proceeding. In keeping with the informal nature sought for the interview, all parties are given the right to participate in the interview and to question all persons present.

Section 5. Records

All relevant official school records, except the personnel records of teachers and other employees and student record files made confidential by school board regulations, shall be made available to the employee.

Comment: In the interest of privacy, the personnel records of other employees and all confidential student records are excepted from the general availability of school records.

Section 6. Principal's Decision

Within three work days after the interview, the principal shall deliver his decision to the employee and to the employee's supervisor. The decision shall be written, and the reasons for it shall be specified. A copy and an acknowledgment of receipt shall be maintained in the principal's office in a grievance file.

Comment: A written decision is required in order to provide documentation that the employee's grievance has been considered and acted upon by the principal, and also to promote the specification of reasons for the decision.

It is important that a record of the grievance be kept. However, since keeping the record in the employee's personnel file might deter the use of the procedure, this section provides for a separate grievance file. If the employee invokes Step II of the procedure, however, the grievance is considered more serious, and Step II provides for placing a record of it in the employee's personnel file.

Section 7. Failure to Meet Time Specifications

If illness, absence from the community, or other good reason makes observing the time limitations impossible, the principal and the employee shall agree on an extension of the time limits. Unless there is a mutually agreed-upon extension of time, the employee may proceed to Step II in the procedure if any time requirement for Step I is not met. If the employee fails to meet the time requirements, the grievance proceeding is terminated unless mitigating circumstances are shown to the principal's satisfaction.

Comment: Specific time limits are necessary in order to resolve the grievance as quickly as possible. Delay by the principal gives the employee the right to proceed to the next step of the procedure. The employee's failure to meet time requirements, without a reason acceptable to the principal, terminates the grievance proceeding.

Step II

REVIEW BY REVIEW PANEL AND SUPERINTENDENT

OPTION 1. REVIEW PANEL ADVISORY TO SUPERINTENDENT

Section 1. Request for Review

Within three work days after receiving the principal's decision an employee who is not satisfied with the decision may request a review of it by a review panel. The request shall be written; shall state the essential facts of the grievance, the reasons for requesting the review, and the remedy sought; and shall be delivered to the superintendent [assistant superintendent for personnel].

Comment: Both Option 1 and Option 2 of Step II provide for a review independent of the school administration. This review is to be done by a review panel. The difference between the two is that in Option 1 the review panel is advisory, while in Option 2 the panel's decision is binding on the superintendent.

The bracketed material is an option that would replace the superintendent with the assistant superintendent for personnel. If this option is selected, the word "superintendent" as it appears in Step II should be changed to "assistant superintendent for personnel". The board may want to provide in the procedure that if the employee is dissatisfied with the assistant superintendent's decision, the superintendent shall review the complaint at a later stage, assuming that the employee requests such a review.

Section 2. Intervention by Superintendent

Within five work days after receiving the request for a panel review, the superintendent may discuss the grievance with the employee and the principal and reverse or modify the principal's decision and grant the remedy requested by the employee. Within the five days, the superintendent shall notify the employee what action, if any, he has taken on the grievance. If the employee's requested remedy is not granted, the superintendent shall forward the request for review to the chairman of the review panel.

The employee may withdraw his request for review at any time by so notifying the superintendent in writing. This action terminates the grievance proceeding.

Comment: This section permits the superintendent to investigate the grievance and grant the remedy requested, thus avoiding the review panel hearing when the superintendent would rule for the employee anyway.

The employee is given the right to a review panel hearing unless the superintendent grants the remedy he requested. However, if the superintendent modifies the principal's decision to the employee's satisfaction, or if the employee does not desire a review panel hearing, he may withdraw his request.

Section 3. Review Panel Hearing

If the superintendent notifies the employee that his requested remedy has not been granted, the chairman of the review panel shall convene the panel within three work days. The purpose of the hearing is to determine the validity of the grievance and to recommend any remedial action considered necessary.

The local school system shall provide all facilities, materials, and clerical help necessary to the effective operation of the review panel.

Section 4. Composition of Review Panel

a. **Members.** The review panel shall have three members. One member and his alternate shall be selected by the school employees. The second member and his alternate shall be selected by the superintendent. The third member [who may not be a school employee] shall be selected by the first two members and shall serve as chairman.

All members and alternates shall serve for three year terms. Terms shall be staggered and all members and their alternates may succeed themselves.

b. **Chairman.** The chairman of the review panel shall have the following duties and powers:

(1) He schedules and notifies all parties of the date, time, and place of the hearing.
(2) He assures the presence of a full panel at the hearing.
(3) He is available before the hearing to answer any questions from the parties or their representatives about the nature and conduct of the hearing.

(4) He has full charge of the hearing and has authority to direct its proceedings and to control the conduct of all persons present, subject to the general directions of this procedural code. He may limit questioning that is unproductively long or irrelevant.
(5) He writes the panel's findings of fact and recommendations for disposition of the grievance. He may delegate this responsibility to another member of the panel.
(6) He transmits the panel's findings and recommendations to the superintendent, the principal, and the employee within three work days after the hearing.

Comment: This procedure for selecting a panel is the one most commonly used in selecting arbitration and mediations panels in labor disputes. We think it will work well here. Since the presiding officer's impartiality is especially important, the chairman must be a person acceptable to other members of the panel.

A presiding officer is provided to meet the panel's need for an executive to make arrangements of time and place and assure the proper notification of all participants. Moreover, some one person must be in charge of the hearing, have the authority to say "who can do what," and maintain order at the hearing.

Section 5. Conflict of Roles

If a member of the review panel is directly involved in the grievance or will probably give testimony to the review panel, he shall be replaced for the hearing by his alternate. If the chairman is directly involved in the grievance or will probably give testimony to the review panel, another person shall be selected by the remaining two panel members to serve as chairman for that hearing.

Comment: Since a fair hearing requires that all panel members be impartial and free of bias, no one directly involved in the grievance or who will likely testify to the panel should serve as a member of the review panel.

Section 6. Hearing Procedure

The hearing shall begin with the employee's statement of the essential facts of the grievance and the remedy sought. He may then present evidence or call witnesses to support his grievance

charges. His witnesses are subject to cross-examination by the principal and the members of the review panel.

The principal may then present any evidence to explain his decision or to refute the statement or evidence presented by the employee. The principal's witnesses are likewise subject to cross-examination by the employee and panel members. If the review panel desires additional witnesses, it may call them on its own authority.

Comment: Because the policies or general working conditions of the school may be involved in the grievance and because it is his decision that is being reviewed, the principal is the logical person to defend his decision and answer the employee's grievance charges.

Section 7. Evidence

Witnesses shall testify in person when possible. If a necessary witness is not available, a written statement signed by him may be substituted.

The review panel shall consider only such evidence as it deems to be fair and reliable.

Comment: This section recognizes the difficulty of applying rules of evidence used in a court of law to a grievance hearing and therefore does not ask the review panel to adhere rigidly to them. Thus it leaves to the panel's decision what evidence should be considered and the weight it should be given. It is better for the panel to admit too much evidence than too little. In general, if a party thinks certain evidence is necessary to prove his contentions, it should be admitted.

Section 8. Questioning of Witnesses

All witnesses, including the employee and the principal, may be questioned by review panel members, the employee and his representative, and the principal and his representative. The chairman may limit unproductively long or irrelevant questioning.

The review panel has primary responsibility for questioning witnesses. Its questions should be as extensive as it thinks necessary and should be both direct and cross-examination.

Section 9. Hearing Is Private

The hearing shall be private. It may be attended only by members of the review panel, the employee and his representative, and the principal and his representative. [Witnesses who are

not a party to the grievance may be present only when they are giving information to the review panel.]

Section 10. Representation

The employee and the principal may each be accompanied by another person at the hearing. If the employee is to be represented by legal counsel, he shall so notify the chairman and the principal. The principal shall not bring the school board attorney to the hearing unless the employee is to be represented at the hearing by legal counsel.

The person accompanying either the employee or the principal may present witnesses, question witnesses, make a statement concerning the grievance, and otherwise assist the party whom he accompanies.

Comment: The principal should not be accompanied by the school board attorney unless the employee is represented by legal counsel. If the employee knows that the school board attorney will not be present unless the employee has legal counsel, he is less likely to obtain legal counsel. Legal counsel will increase the cost of the proceeding for both the employee and the school and usually will increase the adversary nature of the proceeding. Neither result is desirable.

It should be noted, however, that the superintendent of one large urban school unit advised us to encourage, not discourage, the presence of counsel. He maintained that attorneys help clarify issues and usually recommend that spurious complaints and actions be dropped.

Section 11. Record of Hearing

The review panel shall record the essential aspects of any evidence presented orally at the hearing. The chairman shall have custodial responsibility for written matter presented at the hearing.

Comment: The record of the hearing may be in the form of notes taken by a secretary, a transcript prepared by a court reporter, or a tape-recording. The most convenient and least expensive way to provide a complete record is to have a secretary tape-record the proceedings, making certain that all witnesses are clearly identified. If the panel's decision is appealed to the school board, the record can be transcribed and a copy delivered to the board, the employee,

and the principal. The availability of a transcript will permit the school board to review the record rather than conduct a new hearing with all the evidence presented again.

Section 12. Review Panel's Recommendation

The review panel's recommendation shall be by majority vote and shall rest solely upon the evidence properly presented at the hearing.

Within three work days after the hearing, the panel shall summarize the evidence, make findings of fact based thereon, and set forth its recommendations in a written report. The chairman or his designee shall write the report. A copy shall be delivered to the employee, the supervisor, the principal, and the superintendent.

Section 13. Superintendent's Decision

Within three work days after receiving the review panel's report, the superintendent shall render his decision, specifying the reasons for it. The decision may adopt, reject, or modify the review panel's recommendations. A copy of the decision shall be delivered to the employee, the supervisor, the principal, and the chairman of the review panel, and one shall be placed in the employee's personnel file.

Section 14. Failure to Meet Time Specifications

Unless there is a mutually agreed-upon extension of time, the employee may proceed to Step III in the procedure if any time requirement for this step is not met. If the employee fails to meet the time requirements, unless good and sufficient cause is shown to the satisfaction of the superintendent, the grievance proceeding is terminated.

OPTION 2. REVIEW PANEL BINDING ON SUPERINTENDENT

Section 1. Request for Review

Within three work days after receiving the principal's decision, the employee may request the superintendent [the assistant superintendent for personnel] to review the decision. The request shall be written, shall state the essential facts of the grievance and the remedy sought, and shall be delivered to the superintendent.

Comment: As the Comment to Section 1 of Option 1 noted, the assistant superintendent for personnel can replace the superintendent in the review procedure.

Section 2. Employee's Conference

Within five work days after receiving the request for review, the superintendent shall meet and discuss the grievance with the employee and determine whether the principal's decision should be affirmed, reversed, or modified and whether any remedial action is justified. The employee may be accompanied to the meeting by a person of his choice.

The superintendent shall arrange a convenient time and place for the conference and give timely notice to all parties to the conference. He may invite any person directly concerned with the complaint to the conference.

Section 3. Conference Procedure

The employee's conference shall be informal. The procedure set forth in Step 1 for the employee's interview, Section 4, shall apply to this conference.

Section 4. Superintendent's Decision

Within three work days after the conference, the superintendent shall render his decision, specifying the reasons for making it. A copy of his decision shall be delivered to the employee, the supervisor, and the principal, and one shall be placed in the employee's personnel file.

Section 5. Appeal to Review Panel

Within three work days after receiving the superintendent's decision, the employee may request a review of it by the review panel. The request shall be written; shall state the essential facts of the grievance, the reasons for appeal, and the remedy sought; and shall be delivered to the review panel's chairman.

Section 6. Review Panel Hearing

Within five work days after receiving the request for review, the review panel shall hold a hearing to determine the validity of the grievance and whether remedial action is justified.

The local school system shall provide all facilities, materials, and clerical help necessary to the operation of the review panel.

• The following nine sections are identical to sections 4 through 11 and 14 as set out in Option 1. Only the section titles are repeated here.

Section 7. Composition of Review Panel. (See Section 4 on page 10.)
Section 8. Conflict of Roles. (See Section 5 on page 11.)
Section 9. Hearing Procedure. (See Section 6 on page 11.)
Section 10. Evidence. (See Section 7 on page 12.)
Section 11. Questioning of Witnesses. (See Section 8 on page 12.)
Section 12. Hearing Is Private. (See Section 9 on page 12.)
Section 13. Representation. (See Section 10 on page 13.)
Section 14. Record of Hearing. (See Section 11 on page 13.)
Section 15. Failure to Meet Time Specifications. (See Section 14 on page 14.)

Section 16. Review Panel's Decision

The review panel's decision shall be by majority vote and shall rest solely upon the evidence properly presented at the hearing.

If the panel determines that the superintendent's decision is incorrect, it shall decide what remedies are necessary and proper and shall have the power to order those remedies implemented. Its decision shall be binding on the superintendent.

Within three work days after the hearing, the panel shall summarize the evidence, make findings of fact based thereon, and set forth its decision in a written report. The chairman or his designee shall write the report. A copy shall be delivered to the employee, the supervisor, the principal, and the superintendent, and one shall be placed in the employee's personnel file.

Step III

REVIEW BY BOARD OF EDUCATION

Section 1. Right to Review

(Applicable after Step II, Option 1)

Within three work days after receiving the superintendent's decision, the employee may request that it be reviewed by the board of education. The request shall be written; shall state the

essential facts of the grievance, the reasons for appeal, and the remedy sought; and shall be delivered to the superintendent and the chairman of the board of education.

Section 1. Right to Review

(Applicable after Step II, Option 2)

Within three work days after he receives the review panel's decision, the employee or the superintendent may request that the decision be reviewed by the board of education. The request shall be written; shall state the essential facts of the grievance, the reasons for appeal, and the remedy sought; and shall be delivered to the superintendent (employee) and the chairman of the board of education.

Comment: It would be preferable, in our judgment, to make the superintendent's decision in Option 1 a final decision if the superintendent accepts the review panel's recommendation. However, G.S. 115–34 authorizes an appeal "from the decision of all school personnel to . . . the board of education"; thus the employee has a statutory right to appeal to the school board.

Under Option 2 of Step II, the decision of the review panel is binding on the superintendent. Since the panel is impartial, it might be preferable to permit no appeal from this decision. However, to avoid questions of improper delegation of authority by the board of education, the superintendent is given the right to appeal the panel's decision to the board. As already noted, the employee, and perhaps the superintendent, has a statutory right to appeal the decision to the board of education. Thus both are here given the right to appeal the Step II decision to the school board.

Section 2. Grievance Record

Within three work days after [requesting or] receiving a request for review of a decision by the board of education, the superintendent shall deliver the principal's decision, the superintendent's decision, the record of the review panel, and all other written materials relating to the grievance to the chairman of the board of education.

Comment: Bracketed material is to be used only if Option 2 is used in Step II.

Section 3. Board of Education Review

Within seven work days after receiving a request for review, the board of education shall review the complaint at a time and place specified by its chairman. The review may be conducted in executive session and shall be limited to one or more of the following grounds:

(1) That the decision was arbitrary or capricious; or
(2) That the decision is not supported by substantial evidence; or
(3) That a fair hearing was not afforded the employee.

On the basis of the review, the board of education may affirm, modify, or reverse the decision at Step II and require such remedial action as it deems necessary. Its decision shall be final.

Comment: The review by the board of education is on the record. The board performs an appellate court function and does not rehear the evidence presented at the hearing; since the board will have before it all the contentions of the parties and the facts in the case, holding another hearing will seldom serve a useful purpose.

Notwithstanding the finality of the school board's decision within the grievance procedure, G.S. 115–34 authorizes an appeal of the school board's decision to the superior court when the decision affects "one's character or right to teach."

Appendix A

SUGGESTED FORMS TO BE USED IN GRIEVANCE PROCEDURE

(This appendix includes forms that may be used by the employee and school in the various steps of the grievance procedure.)

FORM 1

PRINCIPAL'S DECISION

_____
date

_____
name of employee

_____
position

_____
school

_____
supervisor's name

To: _____
employee

1. Essential facts of grievance:
   (State here all facts necessary to clearly understand the nature of the grievance.)
2. Decision of principal:
3. Reasons for decision:
4. Remedial action taken:

_____
principal's signature

FORM 2

REQUEST FOR REVIEW
OF SUPERVISOR'S OR PRINCIPAL'S DECISION*

_____
date

TO: _____ and _____
superintendent chairman of review panel**

Please be advised that I, _____, am
employee's name

appealing the attached decision of _____,
principal's name

principal of _____, rendered _____. (Attach
school date
a copy of the principal's decision.)

1. The essential facts and reasons for appeal of my grievance are:

   (State here all facts necessary to understand clearly the nature of the grievance and the reasons for the appeal.)

2. I request that the following remedial action be taken:
   (Specify here any remedial action desired.)

_____
employee's signature

*This form can also be used by the employee to initiate his complaint.
**This request goes to the chairman of the review panel only if the superintendent fails to satisfy the employee's grievance.

FORM 3

SUPERINTENDENT'S PRELIMINARY DECISION
(Option 1)

_____
date

TO: _____
employee's name

1. _____ The principal's decision in the grievance of _____ is sustained.
employee's name

2. _____ The principal's decision in the grievance of _____ is reversed (or modified in the following respects).
employee's name

(If principal's decision is modified, state how.)

3. Reasons for decision:

_____
superintendent's signature

FORM 4

REVIEW PANEL'S DECISION
(Option 1)

_____
date

_____
employee's name

_____
position

_____
school

To: _____
superintendent

1. Nature of grievance:
2. Summary of evidence presented:
   (Summarize here all evidence presented to the panel.)
3. Findings of fact:
   (State here the determination as to facts in controversy.)
4. Recommendations to superintendent:

_____
review panel chairman's
signature

cc. employee and principal

FORM 5

SUPERINTENDENT'S DECISION
(Option 1)

_____
date

_____
employee's name

_____
position

_____
school

To: _____
employee

1. Essential facts of grievance:
(State here all facts necessary to a clear understanding of the nature of the grievance, including all previous actions taken on the grievance.)

2. Decision of superintendent:
(State here whether the findings of fact and recommendations of the review panel are adopted, modified, or rejected.)

3. Reasons for decision:
(State here the reasons for modifying or rejecting the review panel's findings of fact and recommendations.)

4. Remedial action taken, if any:

_____
superintendent's signature

cc. principal

FORM 6

REQUEST FOR BOARD REVIEW OF
SUPERINTENDENT'S DECISION
(Option 1)

_____
date

TO: _____ and _____ :
superintendent chairman of school board

Please be advised that I, _____, am
employee

appealing the decision of _____,
superintendent

superintendent of _____ administrative unit,

rendered _____. (Attach a copy of the superintendent's
date
decision.)

1. The essential facts and reasons for appeal of my grievance are:

   (State here all facts necessary to a clear understanding of the nature of the grievance and the reasons for appeal.)

2. I request that the following remedial action be taken:
   (Specify here any remedial action desired.)

_____
employee's signature

FORM 7

SUPERINTENDENT'S DECISION
(Option 2)

_____
date

_____
employee's name

_____
position

_____
school

To: _____
employee

1. Essential facts of grievance:

   (State here all facts necessary to a clear understanding of the nature of the grievance.)

2. Decision of superintendent:

3. Reasons for decision:

4. Remedial action taken:

_____
superintendent's signature

cc. principal

FORM 8

REVIEW PANEL'S DECISION
(Option 2)

_____
date

_____
employee's name

_____
position

_____
school

To: _____
superintendent

1. Nature of grievance:
2. Summary of evidence presented:
   (Summarize here all evidence presented to the panel.)
3. Findings of fact:
   (State here the determination as to facts in controversy.)
4. Decision of review panel:
5. Reasons for decision:
6. Remedial action ordered:

_____
review panel chairman's signature

cc. employee and principal

FORM 9

SCHOOL BOARD DECISION

_____
date

_____
employee's name

_____
position

_____
school

To: _____
superintendent

1. Nature of grievance:
2. Decision of school board:
   (State here whether the superintendent's decision* is adopted, modified, or rejected.)
3. Reasons for decision:
   (State here the reasons for modifying or rejecting the superintendent's decision.)
4. Remedial action taken:

_____
board chairman's signature
signature

cc. employee

*When this form is used with Option 2, it is the review panel's decision, not the superintendent's, that is adopted, modified, or rejected.

Appendix B

TIME REQUIREMENTS SET BY GRIEVANCE PROCEDURE

Step I

A. When employee's immediate supervisor is not the principal

10 days*—for employee to notify supervisor and initiate procedure
3 days—for supervisor to meet with employee after notice of grievance
2 days—for supervisor to render a decision after meeting
2 days—for employee to file grievance with principal after decision
5 days—for principal to hold an interview after receipt of grievance
3 days—for principal to render a decision after interview

Total of 15 days—maximum time after employee has notified supervisor

B. When employee's immediate supervisor is the principal

10 days—for employee to notify principal and initiate procedure
5 days—for principal to hold an interview after receipt of grievance
3 days—for principal to render a decision after interview

Total of 8 days—maximum time after employee has notified principal

Step II

Option 1

3 days—for employee to request review after principal's decision
5 days—for superintendent to render preliminary decision after request
3 days—for review panel after preliminary decision to hold hearing
3 days—for review panel to render recommendations after hearing
3 days—for superintendent to render decision after receipt of recommendations

Total of 17 days—maximum time after principal's decision

Option 2

3 days—for employee to request review after principal's decision
5 days—for superintendent to hold a hearing after receipt of request
3 days—for superintendent to render a decision after hearing
3 days—for employee to appeal to review panel after decision
5 days—for review panel to hold a hearing after appeal
3 days—for review panel to render a decision after appeal

Total of 22 days—maximum time after principal's decision

Step III

3 days—for employee to request board review after superintendent's decision
3 days—for superintendent to deliver records after request for review
7 days—for board of education to review record and render decision

Total of 13 days—maximum time after superintendent's decision [or review panel decision if Option 2 is used]

*Days, as used in the procedure, mean work days.

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